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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, : Case No. 1:08CV153DB
Petitioner, : REPORT AND RECOMMENDATION
v. :
RICHARD DAN LOCKWOOD, :
ALPINE DESIGN LANDSCAPES, LLC, :
: Respondent.

On December 12, 2008, the United States of America filed a petition to enforce its August 12, 2008 IRS Summons (“the Summons”) pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Benson issued an Order to Show Cause (“OTSC”) on January 8, 2009, which referred this matter to the undersigned for a hearing scheduled for February 18, 2009.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed the undersigned to convene a hearing on February 18, 2009 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause as to why he should not be ordered to comply with the Summons.

Respondent appeared at the February 18th hearing *pro se* and the United States appeared through Assistant United States Attorney Jared C. Bennett. At the hearing, the parties agreed to continue the matter believing that it could be fully resolved within 60 days. Consequently, this matter was continued until April 7, 2009.

At the April 7, 2009 hearing, the parties reported that this matter was not entirely resolved, although they remained hopeful that it would be resolved within one week of the hearing. The matter was reset for a hearing on May 6, 2009 if necessary.

However, the matter was not fully resolved because Respondent failed to provide his accounts receivable records to the United States. Consequently, the May 6, 2009 hearing was convened at 9:00 a.m. Respondent failed to appear, and the United States appeared through Mr. Bennett. After the arguments and representations made in the written submissions and at the May 6, 2009 hearing, I report the following:

1. The United States has carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. Respondent has failed to show cause. In any event, Respondent has agreed at both the February 18 and April 7, 2009 hearings to comply with the Summons.

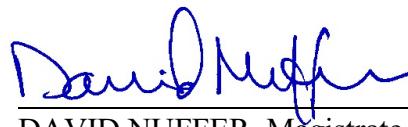
Consequently, the undersigned recommends that:

1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and
2. The District Court order Respondent to provide the information required by the Summons to the IRS no later than 5 days after the District Court adopts this Report and Recommendation.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a *de novo* determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 6th day of May 2009.

BY THE COURT:



DAVID NUFFER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing REPORT AND RECOMMENDATION was mailed, first class mail postage prepaid, this 6th day of May 2009 to the following:

Richard Dan Lockwood
30380 E 4100 N
EDEN, UT 84310

/s/ Jared C. Bennett